

State of Michigan  
Testimony of Lynne Mackey  
Before the House Energy and Technology Committee  
February 14, 2007

Mr. Chairman, ladies and gentlemen of the committee, thank you for inviting me to appear here today. My name is Lynne Mackey and I am the Director of Regulatory Policy for LS Power Development, LLC. The LS Power group of companies has developed, built or owned and operated more than 20 utility-scale, baseload power plants all across the United States in its 16 year existence, and expects to close on the acquisition of an additional 6 plants worth over \$1.4 billion before the middle of this year. Among those is a 900MW facility located in the City of Zeeland, Michigan. LS Power Development, LLC is focused on the development of new power generation facilities to meet power needs in the U.S.

LS Power is in agreement with the conclusion of the 21st Century Electric Energy Plan, recently delivered to the Governor by J. Peter Lark, Chairman of the Michigan Public Service Commission, that Michigan is in imminent need of new baseload power plants. For that reason, we have been engaged in the development of such a plant in Michigan for over two years. A plant like that would represent an investment of more than one billion dollars. At the present time, however, we find that the regulatory climate in Michigan sharply limits our access to long-term wholesale markets for electricity and to further investment opportunities.

Our interest is primarily in baseload power plants, the type that Chairman Lark has reported Michigan may need as many as 18 of before 2025. Electricity needs

fluctuate as energy users turn on and off electrical equipment such as lights, air conditioners and factory equipment. Utilities adjust to these fluctuations by employing generators of different types. Baseload generators operate with the lowest overall costs, so are operated as much of the time as possible and are usually coal-fired or nuclear plants. Baseload plants are distinguished from peaking plants, which are cheap to build but have high operating costs and are therefore intended to be run only at times of peak demand, and from intermediate-load plants which are run in between.

Ladies and Gentlemen, over the course of the next several weeks, you will hear a debate over which of two fundamentally different policy courses the state should be following in order to keep the price of electricity down and the reliability of the state's electric system up. One of those courses is the pro-competition course. The other course is the *anti*-competition course. The policy we advocate is the pro-competition policy.

It is basic economics that competition means lower prices. As a matter of fact, the State of Michigan has institutionalized competition as a way to effectively control the state's expenses and thereby its tax burden on businesses and residences. A visit to the State of Michigan web page on "How Michigan Buys" describes Michigan's commitment to competitive procurement. There you will see that it is state policy that: "Purchasing Operations uses a bidding document called an Invitation to Bid (ITB) for *all* of its solicitations" and "Purchasing Operations encourages the maximum amount of competition in order to secure the best value for the state" and that, "Purchasing Operations is committed to competitively bid all State contracts, in accordance with Governor Granholm's Executive Directive 2005-3. Today, 100% of the solicitations handled by Purchasing Operations are competitively bid, giving Michigan businesses of

all sizes a fair and open opportunity to win state business. There are rare cases when sole source contracts are in the best value of the State of Michigan. These deal with the health and safety of Michigan's residents." Wouldn't a process like an Invitation to Bid, therefore, also be the way to secure the best value for the electric consumers of this state? Contrary to the state's firm preference for competitive bidding and aversion to sole sourcing, sole sourcing power generation is *precisely* what the policy contained in the 21<sup>st</sup> Century Energy Plan recommends for Michigan's Electric consumers. So why are taxpayers protected through a bidding process when the State negotiates a \$50,000 computer contract, but ratepayers don't deserve to be protected when investments in the billions of dollars must be made to ensure the lights stay on?

Beyond the comfort that comes with competition that we will all enjoy the lowest possible prices, we are told that competition provides vitally important economic shock absorbers. In October 2005, the former Fed Chairman Alan Greenspan said, "Governments today, although far more activist than in the 19<sup>th</sup> and early 20<sup>th</sup> centuries are rediscovering the benefits of competition and the resilience to economic shocks that it fosters.... We appear to be revisiting Adam Smith's notion that the more flexible an economy, the greater its ability to self correct after inevitable, often unanticipated disturbances and that greater tendency toward self correction has made the cyclical stability of the economy less dependent on the actions of macroeconomic policy makers, whose responses often come too late or have been misguided...." Greenspan continued, "Flexibility is most readily achieved by fostering an environment of maximum competition." In this period of economic shock that has been visited on the State of Michigan in recent times, isn't it the right time for us to encourage competition in the

hope that it will help us come through this terrible trauma as quickly and painlessly as possible?

To be clear, LS Power is advocating competition in wholesale power markets. It is common in other states to require utility companies to use competitive procurement processes when making decisions regarding new generating resources. Such processes do not preclude the building of new plants by utility companies, but it does keep them honest by allowing other competitors to bid alongside the utilities to supply energy needs.

In informal conversations we have had with policy makers, a concern has occasionally surfaced that when utilities enter into contracts for long term power supplies rather than building their own power plants, there may be some increased risk to the utility's customers due to a lack of direct supervisory authority by the Public Service Commission over the power supplier. We have heard it said that the Public Service Commission would lack jurisdiction over these independent power producers and, therefore, would have limited ability to assure that the power contracted for was delivered as agreed. When you consider that carefully, you will see that that does not logically follow. We are proposing a process whereby the Public Service Commission could actually design and substantially dictate the terms of a binding and enforceable contract between an independent power supplier and a public utility company. While it may be true that there is no recourse to the Public Service Commission for enforcement of such a contract, we do have an entire judicial branch of government that is designed for the specific purpose of helping parties enforce their contracts.

The concern we have heard then continues that independent power producers might not be as substantially capitalized as utility companies are and, therefore, might not

be able to stand behind their contractual obligations even if required to do so in court. That concern does not hold up on close examination, either. Any owner of a power plant must have invested and risked hundreds of millions of dollars of equity capital. No independent power producer will stop short of exhausting every resource to perform on its contractual commitments and, therefore, defend that huge investment.

These concerns are not new to the industry, and have been addressed in bi-lateral, arms length contract negotiations many times to the satisfaction of utilities, utility commissions and utility customers many times all across the country, including right here in Michigan. MCV comes to mind.

Michigan needs wholesale competition because Michigan needs large amounts of new electricity capacity at as low a cost as possible. Electricity is a dominant raw material in all manufactured products. In each average automobile manufactured in the US more that \$60 is spent on purchased electricity for the assembly operation alone and many more dollars are spent energy while manufacturing the inputs. It is easy to imagine that if we can flatten out the rate of increase in electricity prices, the contribution we would make might represent the difference between profit and loss to our auto manufacturers. Likewise, purchased electricity represents more than \$25 per average ton of steel manufactured in the United States. According to U.S. Steel's Great Lakes Works, a Michigan facility, pays more for electricity to produce steel than any other United States Steel plant in the Midwest. When US Steel does its strategic planning, the Michigan facility may very well be the plant "on the bubble." Members of the Committee, what you do here this year could decide the fate of that plant and its employees and many other industrial facilities and their employees.

I urge the committee to select a course which is pro-competition and will lead to lower electric costs for the consumers and industries of Michigan.